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Letter dated 1 October 2012 from the Chair of the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities to the President of the Security Council

I have the honour to transmit herewith the twelfth report of the Analytical Support and Sanctions Monitoring Team established pursuant to resolution 1526 (2004), which was submitted to the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities, in accordance with paragraph (a) of annex I to resolution 1989 (2011).

I should be grateful if the attached report could be brought to the attention of the members of the Security Council and issued as a document of the Council.

(*Signed*) Peter **Wittig**

12-28419 (E) 031012

Please recycle

Twelfth report of the Analytical Support and Sanctions Implementation Monitoring Team, submitted pursuant to resolution 1989 (2011) concerning Al-Qaida and associated individuals and entities

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Summary

This report looks at two key issues facing the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities. The first is how the sanctions regime should adapt to the change in the threat to international peace and security posed by Al-Qaida and its associates, and the second is how the Committee can best turn its attention from due process challenges and other procedural matters towards improved implementation of the measures.

The Analytical Support and Sanctions Implementation Monitoring Team notes the continued degradation of Al-Qaida as a hierarchical and unified body. Its central leadership has little authority over the activities of its affiliates, all of which are currently preoccupied with local or regional issues rather than the pursuit of a global campaign. The Team recommends that, in recognition of this trend, the Committee focus its activity on a regional basis, engaging with States that are most affected by these more localized threats.

This is the first report of the Team in several years in which due process issues have not taken centre stage. The Office of the Ombudsperson has become a highly effective mechanism for dealing with individuals and entities that believe their listing unjustified, and is widely recognized as such. Although a number of potentially important legal challenges remain before the courts, and the Committee will continue to face difficult delisting decisions, there is now more time to devote to improving the impact of the regime.

The Committee is in a good position to reassert the original purpose of the sanctions, namely, to combat the threats to international peace and security caused by terrorist acts. In doing so it will need to be both proactive and innovative. The Committee should now focus on the remaining issues that undermine effective compliance, in particular in the area of State capacity. This too will require the engagement of States on a national and regional basis.

I. Background

1. In June 2011, the Security Council decided to split the Consolidated List of individuals and entities subject to sanctions on account of their association with the Taliban and Al-Qaida into two, moving those entries related to the Taliban into a separate list subject to a new sanctions regime.[1] The sanctions regime established pursuant to resolution 1267 (1999) is now known as the Al-Qaida sanctions regime.

2. The splitting of the list offers the Committee, which oversees the regime, an opportunity to focus it more precisely. This report, the twelfth prepared by the Team, offers some ideas how this might be done.

A. The Al-Qaida leadership

3. The global threat from Al-Qaida (QE.A.4.01) has continued to decline since the Team last reported on 22 February 2011.[2] The death in May 2011 of Usama bin Laden (QI.B.8.01), followed soon afterwards by that of several other key leaders, including Mohammad Ilyas Kashmiri (QI.K.284.10),[3] Atiyah Abd al-Rahman (not listed),[4] Badr Mansoor (not listed),[5] and the high-profile propagandist based in Yemen, Anwar Nasser Abdulla al-Aulaqi (QI.A.283.10),[6] left the movement reeling. Its new leader, Aiman Muhammed Rabi al-Zawahiri (QI.A.6.01), won verbal acceptance from Al-Qaida's affiliates, but failed to provide the energy and leadership necessary to recover lost ground. The Arab Awakening, inspired by widespread non-violent mass protest, and Al-Zawahiri's lame response,[7] showed the irrelevance of Al-Qaida and its ideas to a new generation of activists.

4. Facing attrition from drones and fading international appeal, the Al-Qaida leadership has become ever more reliant on its local and regional partners to maintain its profile. Its own activities, apart from occasional videos calling for action elsewhere, are largely restricted to Pakistan and Afghanistan. However, as militants on both sides of the border take steps towards ending the violence, Al-Qaida is increasingly isolated, partnered with outcasts like Hakimullah Mehsud (QI.M.286.10), the leader of Tehrik-e Taliban Pakistan (TTP) (QE.T.132.11), and dissenters within the Afghan Taliban. While Zawahiri will do what he can to disrupt any peace talks between militants and the Governments of Afghanistan or Pakistan, the trend is currently against him.

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[1] See Security Council resolutions 1988 (2011) and 1989 (2011).

[2] See the eleventh report of the Monitoring Team (S/2011/245).

[3] One of Al-Qaida's most competent attack planners and a link to other militant groups in the Afghanistan-Pakistan border area. Reported to have died in June 2011.

[4] Al-Qaida's operational leader. Reported killed in August 2011.

[5] A key intermediary between Al-Qaida and militant groups in Pakistan. Reported killed in February 2012.

[6] A key influence in Al-Qaida recruitment and involved in the overseas operations of Al-Qaida in the Arabian Peninsula (QE.A.129.10). Killed in September 2011.

[7] Evident in the nine messages "of hope and glad tidings to our people in Egypt" issued on 18, 24 and 27 February, 4 March, 16 April, 21 May, 8 August and 1 December 2011, and the ninth instalment on 29 February 2012. Zawahiri dedicated messages on 27 June 2011 and 7 February 2012 to developments in the Syrian Arab Republic, and a message to Libyans on 11 November 2011. All 18 statements by Zawahiri urge revolutionaries not to trust the West or corrupt electoral processes, but instead to seek the violent overthrow of the State.

B. Al-Qaida affiliates

5. In addition to the Islamic Movement of Uzbekistan (IMU) (QE.I.10.01), which continues to mount attacks in Afghanistan and Pakistan,[8] four other Al-Qaida affiliates remain active. Al-Qaida in the Arabian Peninsula (AQAP) (QE.A.129.10) has had the most success, taking advantage of the political upheaval in Yemen to establish a firm base in the south of the country. Since Aulaqi's death, AQAP, operating as the lead entity of the broader-based Ansar al-Shariah (not listed), has devoted all its energies and resources to national objectives. It is likely to continue to do so as it faces a concerted effort by the Government of Yemen to restore control, although its leaders claim not to have given up all idea of attacking targets outside Yemen.[9] Al-Qaida in Iraq (QE.J.115.04) continues to focus on undermining the authority of the Government of Iraq and stirring up sectarian strife between Sunnis and Shia. It has become increasingly brazen and bloody since the start of 2012, but it lacks popular backing. Although Al-Qaida in Iraq has claimed to support the opponents of President Bashar al-Assad in the Syrian Arab Republic, its influence there is not yet evident.

6. Al-Qaida in the Islamic Maghreb (AQIM) (QE.T.14.01) has continued to plan and execute attacks in the Sahel[10] and, less frequently, in Algeria;[11] but despite a large influx of money from ransom payments, AQIM has failed to make much of an impression outside the region. It has however, provided assistance to Boko Haram (not listed), a terrorist group centred in northern Nigeria which claims to support the objectives of Al-Qaida.[12] Boko Haram's increasingly lethal attacks remain focused on Nigerian targets, but its association with AQIM and the bombing of the United Nations building in Abuja in August 2011, which killed 25 people, suggest a possibly wider agenda in the future.[13]

7. Boko Haram has also received support from the Somalia-based group Harakat Al-Shabaab Al-Mujaahidiin (Al-Shabaab),[14] which Zawahiri acknowledged officially as part of Al-Qaida in February 2012. However, the death in June 2011 of Fazul Abdullah Mohammed (QI.M.33.01), the leader of Al-Qaida in East Africa, and of Bilal al-Berjawi (not listed), his likely successor, and a series of military defeats and leadership disputes, as well as the move to Yemen of many of its foreign

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[8] The IMU has increasingly recruited in Afghanistan. In a statement on 30 November 2011, it claimed that 64 of its 86 fighters killed in Hijra 1432 (2010/11) were Afghans. In August 2011, the IMU began publication of an Urdu language magazine entitled *Ghazwa-ye Hind* (Battle of India).

[9] For example, in an interview with Fahd Mohammed Ahmed al-Quso (QI.A.288.10) published on militant websites in February 2012.

[10] In particular in Mali, for example the attack on a gendarmerie compound on 20 December 2011.

[11] For example, the attack on 26 August 2011 on the military academy in Cherchell, and the attack on 3 March 2012 on the gendarmerie in Tamanrasset.

[12] Briefings from regional officials. See also the report of the assessment mission on the impact of the Libyan crisis on the Sahel region (S/2012/42).

[13] According to the authorities of the Niger, Boko Haram members were involved in the kidnapping on 7 January 2011 of two French citizens in Niamey, in association with a member of the Al-Qaida in the Islamic Maghreb residing in Nigeria.

[14] Listed by the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea on 12 April 2010. See the list under www.un.org/sc/committees/751/pdf/1844_cons_list.pdf and the press release under www.un.org/News/Press/docs/2010/sc9904.doc.htm.

fighters, have left Al-Shabaab at its weakest since it first came to prominence in 2006.

8. Elsewhere, in the Caucasus, Emarat Kavkaz (QE.E.131.11) has also suffered from the death of key operatives and divisions within its leadership. The groups in South-East Asia such as Jemaah Islamiyah (QE.J.92.02), the Rajah Solaiman Movement (QE.R.128.08) and the Abu Sayyaf Group (QE.A.1.01) are barely operating. Abu Bakar Ba'asyir (QI.B.217.06), the former ideological leader of Jemaah Islamiyah and the founder of Jemmah Anshorut Tauhid (QE.J.133.12), was sentenced to 15 years' imprisonment for terrorist activities in June 2012.[15] In Indonesia, the trial of Umar Patek (QI.P.294.11), accused of involvement in the Bali bombings of 2002, began in February 2012, leaving very few established operatives at liberty. The Committee's decision to add Jemmah Anshorut Tauhid and its two leaders[16] to the List in March 2012, however, shows that the threat is not completely extinguished.

II. Strengthening the impact of the sanctions

9. Until recently, the primary challenge facing the sanctions regime was the lack of due process for listed persons; now the primary challenges are the need to tailor the regime to the current threat and to avoid lax implementation. These challenges arise from two major trends: first, the changing threat posed by Al-Qaida and related groups, and second, the perception of implementation as a static concept, whether as an exercise in routine list-checking or as something that can be ignored altogether.

10. While international pressure has led to a marked decline in the authority and capacity of the central leadership of Al-Qaida, as noted above, affiliates, for example in Pakistan, Somalia and Yemen, have been able to increase their impact and profile, at least locally. The threat posed by these affiliates is distinct from the threat posed by the Al-Qaida leadership, but the Committee's focus has remained, by and large, backward-looking and on long-listed individuals in an effort to prevent the reoccurrence of past attacks, rather than forward-looking in an effort to prevent new attacks by more active groups. This approach has also influenced the Committee's attitude to implementation.

11. In the Team's view, the Committee should aim to do two things: refocus the narrative of the sanctions regime on the current threat posed by Al-Qaida and related organizations, and apply the measures in this context, based upon an analysis of their impact to date and likely impact in the future.

A. Revising the narrative of the regime

12. In the early years of the regime, following the attacks in East Africa in 1998 and in the United States in 2001, the target was clear: a centralized Al-Qaida organization led by Usama bin Laden, and a small group of financiers and non-profit organizations that facilitated its activities. In addition, the regime targeted a handful of regional groups with strong ties to Al-Qaida, such as Jemaah Islamiyah in South-East Asia and the Groupe Salafiste pour la Prédication et le Combat (now AQIM) in

[15] The sentence was reduced on appeal but reinstated by the Supreme Court.

[16] Mochammad Achwan (QI.A.304.12) and Abdul Rosyid Ridho Ba'asyir (QI.B.305.12).

North Africa. Since then, although the list has become more diverse, the Committee has not redefined its narrative. The general perception of the regime is that, like so many other counter-terrorism initiatives, it is reacting to what happened yesterday rather than what might happen tomorrow.

13. A revised narrative would emphasize the role of the sanctions regime in mitigating the threat from groups that are increasingly active but, while professing support for Al-Qaida's idea of global terrorism, focus primarily on local or regional targets. The Committee and the Council should leverage the international consensus they have created against Al-Qaida to maximize global support for the States most affected by these groups, at both the national and regional level, and ensure that Al-Qaida-related terrorism has no opportunity to regain its international dimension beyond them.

14. It is likely that individuals acting on their own, or in small groups, may keep the idea of Al-Qaida alive elsewhere, and even mount attacks;[17] but the sanctions regime is not well suited to deal with that threat. What it can do is continue to squeeze the life out of larger and better established groups, starving them of funds, hindering their movements and communications, and exposing them to international condemnation.

B. Improving the impact of the sanctions

15. Most Member States have some mechanisms in place to comply with the three sanctions measures described in resolution 1989 (2011) and as imposed by its predecessors, though in many cases their implementation is compromised by the lack of an adequate legal or administrative framework and limited by a lack of information about the activities and whereabouts of listed parties. The application of the assets freeze is often impeded in this way,[18] assets freezing in some States requiring a court order, or not including the real or personal property of listed persons. Even with the proper legal authority in place, timely financial intelligence about the fundraising activities of listed groups or organizations is essential to freezing such assets, especially when they are held in the names of third parties.

16. The travel ban is generally implemented at formal border crossings, whether through the incorporation of the List into national watch lists, or through checks against the INTERPOL database, but it is not effective for travel within free movement zones, or in the many areas where border controls are weak. With respect to the arms embargo, although most States have adequate laws governing the sale of military equipment, terrorists have little trouble acquiring material for a violent attack where weapons and the ingredients for home-made explosives are readily available. Terrorist training — which also falls under the arms embargo — is more likely to have been hindered by restrictions on the movement of listed persons than through the application of the arms embargo itself.

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[17] For example, Mohammed Merah, who killed seven people in France in March 2012, claimed an ideological association with Al-Qaida.

[18] The Financial Action Task Force has rated only one country (the United Kingdom) fully compliant and 15 largely compliant with its Special Recommendation III on assets freezing (see para. 49).

17. Lack of capacity remains a challenge. Organizations such as the United Nations Office on Drugs and Crime and the Financial Action Task Force (FATF) have made great strides in encouraging the creation, adoption and implementation of appropriate legal frameworks and mechanisms, but overall the level of compliance with FATF Special Recommendation III (now Recommendation 6), of which implementation of the Al-Qaida sanctions regime is a key component, is relatively modest across the board.[19] This does not appear to reflect a lack of political will, or even a lack of technical assistance, which is increasingly available through bilateral or multilateral arrangements; it has more to do with the perception that the task is difficult and the benefits unclear.

18. At the same time, States that have an appropriate legal or administrative framework often appear to think that they need do no more to achieve compliance than circulate the Al-Qaida Sanctions List to financial institutions and make it available at border posts. While having a framework for implementation is certainly a key component of an effective strategy, the ultimate aim of the regime is to use the measures proactively to impede the activities of Al-Qaida and related groups. The Committee should take a lead in helping States to understand the potential of the sanctions regime to work against the threat.

19. If States saw more evidence that sanctions were working, they would be more inclined to implement the measures and face fewer difficulties in doing so. Success would breed success. A visibly effective regime would allow the Committee to take firmer action against States that permit money to flow to listed organizations or individuals, or turn a blind eye to their travel. The Team has always argued that Member State compliance has to come from a belief in the value of the regime, rather than from a sense of compulsion, and it continues to hold this view. This may require the Committee to take a risk-based approach to its work whereby it prioritizes its engagement with States according to its assessment of where implementation is most needed and where it will have most impact.

C. Recommendations

20. The Team recommends that the Committee aim to sharpen the restrictive effect of its measures by listing (and delisting) more strategically and having the Team check the effectiveness and completeness of implementation in conjunction with the States most concerned. An effective strategy for listing might focus on a particular Al-Qaida affiliate under consideration for listing, or on a listed group that appeared unaffected by sanctions. The Committee could ask States' help in identifying the financiers, operatives and managers whose activities would be most susceptible to the three sanctions measures, or whose omission would be egregious given their prominent role. Following any subsequent listing decisions, the Committee could ask the Team to provide an assessment of implementation and of the overall impact of the measures on the individuals and the target affiliate after a set period, in close cooperation with the States concerned.

21. In support of this approach, the Team recommends that the Committee ask the Team to develop its threat assessments to provide the Committee with analysis, typologies, and risk assessments with respect to the principal Al-Qaida affiliates,

[19] See paras. 47-50 for more detail.

whether listed or under consideration for listing. The Team's work could provide the basis for an effective strategy for pursuing Al-Qaida affiliates by identifying their key leaders and operatives, their modus operandi, the source of their funds and their arms, and their vulnerabilities. The Team could also provide the Committee with an initial assessment of regional and national capacity needs for implementation of the measures according to the area of operation of the affiliate concerned.

22. The Team also recommends that the Committee invite relevant States to discuss the threat posed by any unlisted group that claims association with Al-Qaida, or that a State assesses to be so associated. This would help the Committee to understand the threat better and gauge the appropriateness of the sanctions regime as a possible counter-measure, while at the same time increasing its interaction with Member States.[20]

23. Now that the List has been purged of numerous out-of-date listings and the Security Council has increased the authority of the Ombudsperson, Member States have little justification for incomplete compliance with the sanctions measures on the grounds that the regime lacks fairness. Accordingly, the Team recommends that the Committee take further measures to address such non-compliance, particularly by States whose contribution is especially critical to the impact of the Committee's targeting strategy. This could include soliciting and reviewing at regular intervals reports of non-compliance from Committee members, the Team, and Member States. The Committee should consider an appropriate and prompt response, especially where a lack of capacity appears to be at the root of the problem. The Committee should in all cases allow the Member State concerned full opportunity to explain the problems that it faces.

24. The Team further recommends that the Committee aim to increase the effect of its measures by working with INTERPOL and other relevant bodies to improve the content and distribution of information on the List, especially in electronic format. Member States have complained that frequent List updates cause problems, especially if they have to recirculate the complete List each time there is a change; the INTERPOL-United Nations Security Council Special Notices allow them to circulate new information more easily and can provide detail which is not available on the List. While they can never be a substitute for the List, the Team recommends that the Committee ensure that INTERPOL-United Nations Security Council Special Notices exist for all listed individuals and that they carry as much identifying information as possible, with frequent and timely updates as to the likely location and activities of the individual concerned. Such updates could be proposed by members of the Committee, other Member States, INTERPOL or the Team.[21]

25. The Team recommends that the Committee aim to increase awareness of and support for the regime, both in the general public and among Member States. It might do this by:

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[20] As encouraged by the Security Council in resolution 1989 (2011), para. 44.

[21] The public version of Special Notices is readily available through the Internet and can therefore be of help to people in the financial sector as well as officials checking travellers at borders. INTERPOL has agreed arrangements whereby the Team and the Committee secretariat can update Special Notices directly.

(a) Commenting regularly on events related to listed parties in order to emphasize the relevance of the regime to the (changing) threat,[22] and by making reports and strategic decisions available to an audience outside the Committee itself;

(b) Drawing a distinction between its routine meetings and occasional substantive meetings at which it would discuss the sanctions regime in relation to a particular issue,[23] or listed group, with experts attending from the capitals of Committee members, and issuing a statement or report afterwards, if appropriate;

(c) Holding biannual meetings to discuss the overall strategy of the Committee, and issuing a statement subsequently;

(d) Inviting Member States singly or in groups to attend Committee meetings to discuss particular issues relevant to the activities of a listed party in a national or regional context.

26. The Team recommends that Committee members propose individuals for delisting who they consider do not pose a threat to international peace and security, setting a higher standard for inclusion on the List than originally existed for some entries. The Committee could ask the Security Council to extend the mandate of the Ombudsperson to make recommendations on delisting cases that are referred to her by the Committee following the failure of its members to agree.

27. The Team recommends that the Committee and the Security Council consider the advantages of allowing the Team some investigative powers, although in all cases the Team should operate with the knowledge and consent of the Member States concerned.

28. The Team recommends that the Committee find ways to coordinate its activities more closely with the Counter-Terrorism Committee, particularly concerning capacity-building.[24]

29. The Team recommends that the Committee identify and develop ways to measure the impact of the sanctions regime beyond the often misleading metrics of the amount of assets frozen, the number of cross-border trips prevented, or new names added to the List. One way might be to ask the Team to interview as many listed and delisted individuals as possible about their experience of being listed, with the agreement of the State concerned.

III. Implementation of the sanctions

A. The Ombudsperson and legal challenges

30. Since the creation of the Office of the Ombudsperson,[25] and particularly following the enhancements to her mandate introduced by the Security Council in resolution 1989 (2011),[26] the locus of the legal debate around listing and delisting has moved back to the Security Council and the Committee and away from national

[22] In May 2011, the Committee issued a statement concerning the death of Usama bin Laden.

[23] For example the difficulties States face in implementing the assets freeze.

[24] In line with Security Council resolution 1989 (2011), para. 52.

[25] By Security Council resolution 1904 (2009).

[26] See resolution 1989 (2011), paras. 21 and 23 and annex II.

and regional courts. Petitioners for delisting have benefited accordingly. While national and regional courts and treaty bodies may have had some indirect impact on a very small number of the Committee's decisions on delisting,[27] the Ombudsperson process has resolved a substantial number of cases relatively quickly.[28] The success of the mechanism has attracted a steady flow of new petitioners, some of whom are also involved in litigation in national and regional courts.

31. The Ombudsperson's reviews have set a high standard for continued listing. She has stated the need for sufficient information to form a "reasonable and credible" basis for listing,[29] which seems to fit with the standard expressed by courts in a number of jurisdictions, including the United States of America and in Europe. In practice, the Ombudsperson has required that there be specific information supporting allegations that the petitioner meets the listing criteria and has generally sought current information, especially where older information was considered vague or unsubstantiated.

32. The Ombudsperson has argued that her current mandate can adequately safeguard the rights of listed persons to a fair, independent, and effective process. If we "focus ... on the fundamental components of fairness, as opposed to the mechanics by which they are delivered, ... the Office of the Ombudsperson ... can provide the necessary fair and clear process ... [T]he right to be informed, the right to be heard, and the right to effective review can be addressed."[30] The argument that the Ombudsperson's mandate provides due process guarantees is now a strong one, even in terms of what the General Court of the European Union believed was required: "an independent and impartial body ... responsible for hearing and determining, as regards matters of law and fact ... actions against individual decisions taken by the Sanctions Committee".[31] The Office of the Ombudsperson, both in law and in practice, appears to meet these criteria, including an effective review through the presumption that her recommendations will have the force of decisions.

33. The case of Yasin Abdullah Ezzedine Qadi (QI.Q.22.01) and several others remain pending before the courts and still have the potential to damage the regime or to distract it from looking forward. In this case, the General Court of the European Union held on 30 September 2010 that Qadi had been unlawfully deprived of his property without due process because the reasons adduced for his listing were vague and unsupported and there was inadequate opportunity for him to contest them. The ruling dismissed as insufficient the Ombudsperson's initial mandate, and

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[27] For example, the Committee's decision to remove from the Consolidated List Nabil Abdul Salam Sayadi and Patricia Rosa Vinck on 20 July 2009 (press release available from www.un.org/News/Press/docs/2009/sc9711.doc.htm).

[28] As at 28 March 2012, the Ombudsperson had accepted 25 cases for review and had submitted her reports on 16 to the Committee. Six have resulted in delistings, one led to an amendment of the List, one listing remains in force and one case was withdrawn by the petitioner. Seven cases are under the Committee's consideration. See www.un.org/en/sc/ombudsperson/status.shtml.

[29] See, for example, the Office of the Ombudsperson, "Approach to and standard for analysis, observations, principal arguments and recommendation", August 2011 (available from www.un.org/en/sc/ombudsperson/approach.shtml).

[30] Ana María Salinas de Frías, Katja L. H. Samuel and Nigel D. White (eds.), *Counter-Terrorism: International Law and Practice* (Oxford, Oxford University Press, 2012), chap. 16.

[31] Judgment of the General Court (Seventh Chamber) of 30 September 2011, *Kadi v. Commission*, Case T-85/09 (available from http://curia.europa.eu).

it remains unclear whether the revision under resolution 1989 (2011), which gave her decisions a strong presumption of finality, will be sufficient for the European Court of Justice, which has yet to rule on an appeal of the lower court judgment.[32]

34. Meanwhile, the United States District Court for the District of Columbia decided against Qadi on 19 March 2012 concerning a parallel challenge he had filed against his listing in the United States.[33] The Court decision held that Qadi's listing by the United States was "amply supported" by both classified and unclassified materials demonstrating his support for, among others, persons tied to Al-Qaida and related groups and activities. The Court found that Qadi had supported Al-Qaida associates, including Wa'el Hamza Abd al-Fatah Julaidan (QI.J.79.02), with benefits and over $1 million in funds. This decision now raises the question how other bodies reviewing Qadi's case should treat the American court's findings, especially given that the United States court had access to classified material.

Recommendation

35. One area in which the Ombudsperson process could still be improved is with respect to transparency, particularly where the Ombudsperson recommends continued listing. The Team recommends that, in these cases, the Committee make her report (at least its non-confidential aspects) available to all in order to inform the public of the justifications for listing in addition to the narrative summary, and provide a further basis for national or regional courts to rely on the Committee's decision.

B. The List

36. Since the Team last reported, the Committee has added 23 new names to the List (20 individuals and 3 entities) and has removed the entries for 16 individuals,[34] 6 of them following a review of the case by the Ombudsperson, and for 26 entities, 23 following a review by the Ombudsperson.[35] Over the same period the Committee has updated the entries of 146 individuals and 71 entities, representing more than 350 changes to the List.[36] The List now has 329 entries, 260 for individuals and 69 for entities. The proactive engagement of the Committee in seeking additional data from Member States has led to considerable improvement in the scope and accuracy of the List.

C. Impact of the reviews

37. The Security Council in resolution 1989 (2011) mandated the Committee to conduct four reviews — of entries that lack identifiers sufficient to ensure effective implementation of the measures, of persons reportedly deceased, of entities that are

[32] It should be noted however, that the Court may consider only the opportunities for appeal available to Qadi at the time of his listing.

[33] *Kadi v. Geithner*, case No. 09-0108 (memorandum opinion 19 March 2012).

[34] As at 30 March 2012.

[35] Some cases reviewed by the Ombudsperson have involved more than one entry on the List.

[36] During this period, the Team submitted a total of 393 updates of which the Committee approved 366 and rejected 2, the balance referring to entries which were subsequently removed from the List or that remain under consideration by the Committee.

reported or confirmed to have ceased to exist, and of names that have not been reviewed in three or more years (paras. 37-40). To date, the reviews have demonstrated the determination of the Committee, with the patient and sustained support of Member States, to maintain a high standard of review for each relevant entry on the List, thereby allowing the Committee to improve the List and ensure that all listings remain credible, appropriate and as user-friendly as possible for implementation.

1. Lack of identifiers

38. At the conclusion of the review mandated in paragraph 25 of Security Council resolution 1822 (2008), the number of individuals on the Al-Qaida Sanctions List that lacked adequate identifiers to allow for accurate and positive identification dropped from 77 to 36.[37] The Committee has agreed that the Team should work with Member States to try to reduce this number still further.

2. Reportedly deceased persons and defunct entities

39. There are 34 individuals on the List who are reportedly deceased. The Committee has decided that, taking into account paragraph 31 of resolution 1989 (2011),[38] it should write to the designating State(s) for 26 of these names, drawing their attention to the procedures set out in paragraph 27 of resolution 1989 (2011), while the Team should continue to seek further information on the status of the rest. There are 32 entities on the List that are reported or confirmed to have ceased to exist. The Committee has decided to write to the designating State(s) for 14 of these entities as above, asking the Team to seek further information on the remainder.

3. Triennial review

40. In accordance with paragraph 40 of resolution 1989 (2011), the Committee has considered the 18 names which it added to the List between July and December 2008. Three of these names have been removed from the List and another four have already been considered under other reviews or in the context of proposals by the Team to amend their entries. The Committee will now write to the designating State(s) for the remaining 11, once again drawing attention to the procedures set out in paragraph 27 of resolution 1989 (2011).

4. Recommendation

41. When reviewing entries for individuals or entities that the Committee believes may be dead or defunct, or entries that lack identifiers, the Committee has begun to draw the attention of designating States to the provisions of paragraph 27 of resolution 1989 (2011). This paragraph gives such requests the power of a decision unless rejected by the Committee by consensus, or by a vote in the Security Council. To increase the impact of the reviews, the Team recommends that the Committee extend this practice to all its reviews.

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[37] The Team considers an entry inadequate if it lacks one of four basic identifiers: full name, (approximate) date of birth, place/country of birth, and nationality.

[38] Which encourages delisting requests for individuals officially confirmed to be dead.

D. Narrative summaries of reasons for listing

42. As well as explaining the listing to the party concerned, narrative summaries serve the purpose of informing the public and explaining the basis for listing to national authorities. Since the Team last reported, it has prepared narrative summaries for all new listings and 200 amendments to existing ones, both technical and substantive. Nevertheless, many narrative summaries need further improvement; for example, a number contain no information about the activities of the listed individual or entity over the past five years, which may give rise to questions about the rationale for continued listing. The Team will continue to work with Member States, especially designating States, to bring them up to date.

E. New format for the List

43. In order to promote the accuracy, completeness and accessibility of the information on the List, the Security Council has approved new forms for listing submissions,[39] and a new standardized format for the List itself. Until now, the format has largely retained a structure developed in 2003[40] and is not fully compatible with the automated searches that the most active implementers use to cope with the high volumes of work generated by national and international sanctions regimes. The Committee has asked its secretariat to build the new format of the List according to a model proposed by the Team, and expects to introduce it by the end of 2012.

44. In preparing the new format, the Team consulted potential stakeholders, including Member States, regional bodies, specialized agencies and several financial institutions as well as the Society for Worldwide Interbank Financial Telecommunication (SWIFT).[41] Experts from both the public and private sector commented on the need to limit the large number of false positives (hits on listed names thrown up by manual or automatic searches that turn out not to be identical after labour-intensive secondary checks) and the risk of false negatives (true hits that the matching system fails to identify). The new standardized format will reduce the scope for error and allow end users to employ more sophisticated screening techniques. A new standard naming formula will ensure that the names of listed individuals are read correctly.[42]

45. The new list format is designed to cater also for the different requirements of the other Security Council sanctions regimes and so allow the standardization of data across all lists. A uniform Security Council format would greatly help end users to process the information and thereby implement the regimes more efficiently. The

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[39] By resolution 1735 (2006), para. 7, the Security Council called upon States to use a cover sheet when proposing names to the Committee for addition to the List.

[40] The Committee added an Extensible Markup Language (XML) version of the List to its website in November 2007. However, the original design did not exploit the full potential of the format and there was no XML schema definition (XSD) describing the layout of the data, nor a standardized method of input. See www.un.org/News/Press/docs/2007/sc9173.doc.htm.

[41] The Wolfsberg Group played an essential role in helping to bring these stakeholders together.

[42] The new method envisages: first, standardizing descriptions for all names regardless of script, origin or quality; second, describing the name components to avoid the confusion of different naming conventions; and third, describing the hierarchy of the names by which a listed person is known.

United Nations model can also be promoted as a standard for national and regional lists and so far at least one Member State has decided to adopt it.

IV. The assets freeze

46. The assets freeze has considerable potential to reduce the threat from Al-Qaida and its associates, but it is hard for States to implement. Fortunately, there are many national, regional and international bodies which have a part to play in improving compliance, including FATF, FATF-style regional bodies, the World Bank, the International Monetary Fund (IMF), the Counter-Terrorism Committee Executive Directorate, the United Nations Office on Drugs and Crime, and the private sector.

A. The Financial Action Task Force and levels of compliance

47. Member State implementation of FATF recommendations is increasing but has further to go. In resolution 1989 (2011), the Security Council strongly urged Member States to implement the comprehensive international standards embodied in the Forty Recommendations on Money Laundering and the Nine Special Recommendations on Terrorist Financing of FATF. It also encouraged States to follow the guidance provided in Special Recommendation III for effective implementation of targeted counter-terrorism sanctions. Moreover, it encouraged the Team to work with organizations such as FATF to promote awareness of, and compliance with, the measures.[43]

48. The FATF framework is wider than the Al-Qaida sanctions regime but offers complementary approaches and tools for dealing with Al-Qaida-related terrorist financing. FATF has developed comprehensive standards and evaluation and enforcement mechanisms which include the requirement to implement the assets freeze. In its interaction with FATF, the Team has been able to provide specific expertise regarding the sanctions regime coupled with an understanding of the threat posed by Al-Qaida and other listed organizations and individuals. As a result, FATF guidance to States is highly relevant to their implementation of the sanctions measures.

49. FATF evaluations reveal the widespread continuing need for Member States to develop the capacity to implement the assets freeze. By the end of March 2012, evaluation reports for 162 Member States showed that the majority still do not have the legal framework to freeze assets without delay outside a criminal process and, even when they do, they often do not implement the assets freeze effectively. Only 16 Member States have been rated compliant or largely compliant with Special Recommendation III. Sixty-four States have been rated partially compliant, that is, they were found to have taken substantive action and to have a legal basis for freezing assets, but with some deficiencies and a general need to improve their systems and procedures. Eighty-two States have been rated non-compliant, which means that they are completely unable to implement the assets freeze.

[43] See resolution 1989 (2011), para. 41 and annex I, para. (v). In resolution 1617 (2005), para. 7, the Security Council had already strongly urged all Member States to implement the comprehensive, international standards embodied in the Financial Action Task Force recommendations.

50. Of the remaining 31 Member States of the United Nations, 9 have been the subject of a joint IMF and World Bank Financial Sector Assessment Programme, but the detailed reports are not publicly available. However, the companion reports on the observance of standards and codes suggest that implementation of the assets freeze regime is weak here too. Of the other 22 States, FATF has named 5 as having "strategic anti-money laundering and combating the financing of terrorism deficiencies".[44] No FATF-specific information is available on the remaining 17 States but, considering that 7 of them are themselves subject to Security Council sanctions,[45] it is not likely that many will have the capacity for full compliance. The geographical area of weakest compliance is Africa where, of the 33 States evaluated, 6 were found partially compliant and 27 non-compliant.

B. Challenges in implementing the assets freeze measure

51. Anti-money-laundering and countering terrorist financing assessments have shown that most Member States have technical, financial and human resource capacity constraints. Member States with largely cash-based economies where most economic activity takes place outside the formal sector face particular difficulties. This is especially true in sub-Saharan Africa, where the number of banked households is estimated at only 12 per cent.[46] The unregulated alternative informal sector can be an attractive conduit for illicit transactions and its exclusion from the regulatory process is clearly detrimental to the implementation of an effective assets freeze regime. The Team has worked with several States where informal value transfer systems are common, and with the owners of such businesses to see how they might assist the implementation of the assets freeze, rather than undermine it. It intends to continue this work together with other United Nations system partners and come forward with observations and recommendations.

52. As the Team has pointed out in previous reports,[47] implementation of the assets freeze is particularly complex in the area of charitable giving and humanitarian assistance. There are numerous "charities" and not-for-profit organizations on the Al-Qaida Sanctions List, and both listed groups, like Al-Qaida in the Arabian Peninsula, and unlisted groups affiliated with Al-Qaida, like Al-Shabaab, control territory where humanitarian relief and development aid are needed; some commentators have argued that the sanctions measures hinder legitimate civil society activity and relief efforts.[48] The Team is working with the Counter-Terrorism Committee Executive Directorate and other United Nations partners on a study of terrorist abuse of the non-profit sector and how to prevent it. The Team expects to come forward with suggestions in due course.

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[44] See www.fatf-gafi.org/pages/0,3417,en_32250379_32236992_1_1_1_1_1,00.html.

[45] Côte d'Ivoire, the Democratic Republic of the Congo, Eritrea, Iraq, Libya, Somalia and the Sudan are subject to Security Council sanctions. See www.un.org/sc/committees/index.shtml.

[46] The Consultative Group to Assist the Poor and The World Bank Group, *Financial Access 2010: The State of Financial Inclusion through the Crisis* (Washington, D.C., 2010), p. 4.

[47] Most recently in its tenth report (S/2009/502), para. 65.

[48] Ben Hayes, *Counter-terrorism, 'policy laundering' and the FATF: legalising surveillance, regulating civil society* (Amsterdam and London, Transnational Institute and Statewatch, February 2012).

C. Exemptions

53. By paragraph 57 of resolution 1989 (2011), the Security Council directed the Team to review Committee procedures for granting exemptions to the assets freeze under resolution 1452 (2002), and to provide recommendations for their improvement. In November 2011, the Team sent the Committee a paper in which it argued that the current system had a negative effect on compliance because most Member States where listed individuals were resident appeared to ignore it, and that the mechanism neither provided an effective exemptions procedure nor enhanced implementation of the assets freeze.

54. The Committee agreed that the Team should approach Member States with listed residents to discuss the advantages and drawbacks of resolution 1452 (2002) as a way to understand why so few had notified the Committee of their intention to allow basic expenses under paragraph 1 (a) of the resolution. The Team will also research how listed individuals who do not benefit from exemptions are managing to cover their basic expenses. On the basis of the replies, the Team will make further proposals to the Committee.

V. The travel ban

A. Implementation of the travel ban

55. The activities of listed groups are increasingly restricted to areas where there is little effective government and weak border controls. This is a tribute to the improvement in border management systems elsewhere, and a continuation of this trend will further restrict the areas in which listed groups can move freely. As the information on the List improves and the INTERPOL-United Nations Security Council Special Notices carry more detail and become a more familiar tool for border authorities, the risk that listed individuals take when travelling internationally will grow.

56. The Committee has received no reports of listed individuals being stopped at borders since the Team's last report, despite further emphasis by the Committee on adding adequate identifiers to the List entries, which has meant that recent additions to the List have included the details of passports and national identity cards. As the Team is not aware of many incidents of State non-compliance with the travel ban, this suggests that for the most part listed individuals are not crossing international borders or are taking great care to remain hidden when they do so.

B. Exemptions

57. The Committee has introduced better procedures for granting exemptions to the travel ban quickly and openly,[49] and States should note that listed individuals

[49] In December 2008, the Committee updated its guidelines (see press release available from www.un.org/News/Press/docs/2009/sc9607.doc.htm), adding inter alia a new section on exemptions from the travel ban (guidelines available from www.un.org/sc/committees/1267/pdf/1267_guidelines.pdf and fact sheet available from www.un.org/sc/committees/1267/fact_sheet travel_ban.shtml).

may need to travel for a variety of reasons, including to fulfil a religious obligation. Since the Committee established the new procedures it has granted three exemptions.

VI. The arms embargo

A. Impact of the arms embargo

58. The arms embargo struggles to add much to other laws and regulations governing the sale and acquisition of arms. Listed individuals who live in sight of the law will feel the most impact, so long as States implement the embargo against them, but many individuals and groups on the List operate out of sight or out of reach of the authorities. Furthermore, even though heavy weapons and manufactured explosives are well regulated, small arms and material for improvised explosives are widely available, as is instruction on their use. Al-Qaida's ambitions, including to acquire weapons of mass casualty, are more constrained by its own limitations, and by international safeguards, than by explicit enforcement of the sanctions regime. While the embargo serves a function as an expression of the will of the international community, its full implementation will require more determination.

1. Afghanistan and the bordering regions

59. Afghanistan and the border areas of its neighbours, particularly Pakistan, continue to experience violence from Al-Qaida and related listed groups. Gulbuddin Hekmatyar (QI.H.88.03) maintains a training capacity in Afghan refugee camps in Pakistan, and characteristically attempts to assert his relevance to the political future of Afghanistan by attacking the State. The Islamic Movement of Uzbekistan has extended its reach into northern Afghanistan while still remaining active on the Pakistan side of the border. The IMU derivative, the Islamic Jihad Group (QE.I.119.05), has trained individuals from Afghanistan, Germany, Pakistan, Tajikistan, Turkey and Uzbekistan, as well as elsewhere, though many have been killed or captured. Jaish-i-Mohammed (QE.J.19.01) operates against sectarian targets in Pakistan but has also supplied fighters and suicide bombers for deployment by other associates in Afghanistan, as have IMU and Lashkar-e-Tayyiba (QE.L.118.05). The Tehrik-e Taliban Pakistan under the leadership of Hakimullah Mehsud continues to launch violent attacks against Pakistan,[50] and arms, training and materiel for attacks are sourced on both sides of the border.

2. The Sahel and the Middle East

60. In the Sahel the arms embargo has likewise had little measurable effect. Al-Qaida in the Islamic Maghreb has become a regional threat targeting local security forces and civilians, including foreigners. Civil strife in Libya has led to many more arms, including man-portable air defence systems, coming on to the market,[51] though the Team has received only one report of a missile being fired at

[50] Despite a reported attempt involving Hassan Muhammad Abu Bakr Qayed, a.k.a. Abu Yahya al-Libi (QI.Q.297.11), and others in February 2011 to divert its attention to Afghanistan.

[51] Chad intercepted two SA-7 missiles from Libya in its Tibesti region, and the Niger has seized several more. The authorities could not confirm the destination of the missiles but the seizures confirm their availability in a region where AQIM is active.

an Algerian helicopter. From July 2011 to February 2012 the Algerian authorities seized hundreds of small arms, thousands of rounds of ammunition, more than a ton of explosives and other materiel such as communication equipment. Some of these weapons were believed destined for Mokhtar Belmokhtar (QI.B.136.03). Also of concern is the security of nuclear and chemical materials in Libya, which has already attracted attention from specialized international agencies and Member States.

61. As for advanced weapon systems, in February 2012 the authorities seized dozens of anti-aircraft missiles near the border between Algeria and Libya; similar missiles have been confiscated in Chad and the Niger, and, around the end of 2011, the authorities captured approximately 200 anti-tank missiles, again on the border between Algeria and Libya. It is likely that many more missiles are out of State control. In June 2011, security forces in the Niger intercepted a convoy heading to northern Mali with 640 kg of Semtex originating from Libya and destined for AQIM.

3. The Arabian Peninsula, the Horn of Africa and the Middle East

62. In Yemen, Al-Qaida in the Arabian Peninsula has had no difficulty in finding weapons as the country is awash with small arms. In the civil unrest during 2011 and 2012, AQAP was able to capture heavy weapons and even tanks, though their value is limited to the local conflict. The consequences of the Libyan crisis have also been seen in the Horn of Africa, but inversely several States have reported that the flow of arms from Libya to Somalia through Eritrea declined dramatically as the previous Libyan regime crumbled. Nonetheless, Al-Shabaab claimed in March 2012 that it had fired a surface-to-air missile against a military helicopter in Lower Shabelle region[52] and, despite set-backs, it has managed to keep an irregular army in the field for over six years. Member States in the region have also drawn attention to Al-Shabaab's control and use of harbours and airports to violate the arms embargo.

4. South-East Asia

63. By contrast, the States in South-East Asia have continued to implement increasingly effective ways to deny arms, materiel, training and recruits to Al-Qaida and its associates. They have achieved this in part by strengthening legal instruments and ensuring their enforcement.

B. Scope for technical improvements to the arms embargo measure

64. This regional survey shows that effective implementation of the arms embargo relies on a combination of effective government and the political will to control the traffic in arms, materiel and military technical assistance or training. The development and implementation of international control measures to govern the legal[53] and

[52] Statement "Shabaab al-Mujahideen Movement — Targeting a Military Helicopter with a Surface-to-Air Missile (Sunday, 12 Rabie al-Akher 1433)" issued on 6 March 2012.

[53] For example, the arms trade treaty (available from www.un.org/disarmament/convarms/ArmsTradeTreaty).

illegal[54] arms trade have the potential to strengthen implementation of the arms embargo, in particular if the Security Council embargoes are taken into account in drafting such treaties and their implementation mechanisms.[55] However, international instruments have not routinely made reference to related Security Council sanctions regimes, despite the obligations of Member States to comply with them. In reaction to the Team's earlier recommendations to seek greater coordination in this regard, Member States and international organizations have expressed concerns ranging from political sensitivities to fears of an additional cost of doing business. The Security Council has nevertheless resolved to enhance such coordination.[56]

65. In a few cases the arms embargo has encouraged Member States to adopt national laws and regulations that incorporate the sanctions measure, or has persuaded them to revise existing regulation, though the Team has found that this is the exception, not the rule. Where laws do exist and are effectively applied, listed parties have had to resort to using civilian dual-use goods to produce improvised explosives. The Team has previously assessed how to target such precursor materials,[57] but it appears that this is not feasible because of their wide availability and their importance to modern societies. In short, technical improvements to the arms embargo measure may have reached their limits.

C. Improving the political commitment to implementation

66. While no Member State would willingly allow Al-Qaida to acquire arms and run training camps freely, the priority given to ensuring that this does not happen varies. Many States lack resources, face competing demands, consider the threat to be limited, are involved in regional conflicts, or look to their neighbours to do more. The Committee is open to requests from States for assistance,[58] but the problem is greater than that. The arms embargo directed against Al-Qaida will work best if it is part of an overall, global effort to limit the flow of arms. States have generally sought to manage their arms trade on their own, and it is only in a few cases that Member States have in their contacts with the Team requested the Security Council to ensure that other Governments improve their compliance with the sanctions regime. Generally, in areas where the problem is long-standing and deep-rooted, the perception that little can be done has undermined the value of the arms embargo.

67. Al-Qaida and its listed affiliates will seek to mount attacks wherever they can and with whatever means are at their disposal; despite the difficulties of enforcement, States need robust and adequate laws to make it as difficult as possible

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[54] For example, the Protocol against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/255, annex) (available from www.unodc.org/pdf/crime/a_res_55/255e.pdf).

[55] Under Article 48 of the Charter of the United Nations, Member States are obliged to observe mandatory decisions of the Council, not only directly but also through their action in appropriate international agencies of which they are members.

[56] See Security Council resolution 1735 (2006), para. 23. By resolution 1989 (2011), annex I, para. (v), the Team was further mandated to work with relevant international and regional organizations in order to promote awareness of, and compliance with, the measures.

[57] In its eighth report (S/2008/324), para. 75.

[58] See resolution 1989 (2011), annex I, para. (w).

for them to do so. The arms embargo is a wide-reaching measure which States may find impossible to implement completely, but it nonetheless forms a useful legal basis for trying, and an objective to aim for. The Team therefore proposes to work with the United Nations Office on Drugs and Crime, the Counter-Terrorism Committee Executive Directorate, regional organizations and specialized agencies to raise the awareness of Member States concerning the arms embargo and identify ways to improve levels of compliance.

D. The Internet

68. Just as Member States regard cyberwarfare as a new threat to their conventional defence capabilities, so too do they see cyberterrorism as a growing problem for the future. The arms embargo covers such activity, both in terms of the use of the Internet to provide training, and its use as a means of attack. The Committee has already agreed with the Team's recommendation[59] to specify that the command, control and communication capabilities of listed parties are targets of the arms embargo,[60] and is open to further suggestions. It is likely, however, that the debate on terrorist use of the Internet will be subsumed into a larger discussion of appropriate controls of the Internet more broadly.

VII. Activities of the Monitoring Team

A. Visits

69. The Team visited 21 Member States between February 2011 and March 2012. It conducted three of these trips jointly with the Counter-Terrorism Committee Executive Directorate, so bringing the total number of joint visits to 19. With the encouragement of the Committee, the Team has attached great importance to its direct engagement with national authorities, particularly following the Security Council's decision in resolution 1989 (2011), paragraph 51, that the Committee should facilitate capacity-building for enhancing implementation of the measures, upon request by Member States.

B. International and regional organizations

70. The Team participated in two workshops organized by the Counter-Terrorism Committee Executive Directorate on cooperation with international organizations and in other workshops and meetings organized by the United Nations Office on Drugs and Crime, FATF, FATF-style regional bodies and INTERPOL. The Team took part as a trainer in three INTERPOL training courses on the INTERPOL-United Nations Security Council Special Notices to help officials understand them better and so improve implementation of the Al-Qaida sanctions measures. Thirty-four countries have participated in these courses so far, in South and South-East Asia, Latin America and Europe. Future courses are planned for other regions. The Team also attended the INTERPOL General Assembly held in November 2011 in Hanoi, and has agreed to work with INTERPOL to raise awareness of the Special Notices both within and outside the law enforcement community.

[59] See, for example, the eighth report (S/2008/324), para.83.

[60] In S/2008/408, para. 22.

C. Regional meetings with intelligence and security services

71. In April 2011 the Team held its ninth meeting for heads and deputy heads of intelligence and security services from Algeria, Morocco, Pakistan, Saudi Arabia, Tunisia and the United Arab Emirates.[61] In May 2011, the Team convened its third meeting on South-East Asia with the security services of Indonesia, Malaysia, the Philippines, Singapore and Thailand. Both meetings gave rise to a useful discussion of the threat from listed parties and ways to increase the impact of the sanctions regime.

D. Cooperation with other Security Council committees

72. The Team continues to have frequent contact with the Counter-Terrorism Committee Executive Directorate and the experts that support the Committee established pursuant to resolution 1540 (2004). It has also reached out to the expert groups appointed to assist other sanctions committees to see what exploitable commonality exists between them. The Team continues to coordinate its travel plans with the Executive Directorate and to exchange information prior to and after their respective trips.

73. The Team continues to pursue the common strategy elaborated with the Executive Directorate and the group of experts of the Committee established pursuant to resolution 1540 (2004), and approved by the three Committees, to assist States that owe reports to the Security Council. The focus is on a common approach at the subregional or regional level, starting in Africa but extending to the Middle East and the Caribbean. The three groups have now agreed to a second joint strategy to engage with international, regional and subregional organizations in a comprehensive way. All three Committees have noted this initiative and the three expert groups plan to draft a common modalities paper.

E. Counter-Terrorism Implementation Task Force

74. The Team has continued to play an active role in the Counter-Terrorism Implementation Task Force, both within the Working Groups and in the context of individual projects. The Working Group on Countering the Use of the Internet for Terrorist Purposes, which the Team co-chairs, has published a compendium report on legal and technical issues,[62] completing the initial cycle of its work on the legal, technical and counter-narrative aspects of countering terrorist use of the Internet.

75. The efforts of the Task Force on countering the appeal of terrorism have led to the formal establishment of the Working Group on Dialogue, Understanding and Countering the Appeal of Terrorism, and the Team will play a central role in its activities. It hopes to continue its documentary project, which in 2011 saw the production of *Second Chance*, depicting the life of a former Saudi terrorist who turned away from violence with the help of the government rehabilitation programme.[63] The documentary, produced in partnership with the Department of

[61] Events prevented the attendance of Libya and Yemen.

[62] Available from www.un.org/en/terrorism/ctitf/pdfs/WG_Compendium-Legal_and_Technical_Aspects_2011.pdf.

[63] Available from www.un.org/en/terrorism/ctitf/documentaries.shtml.

Public Information of the Secretariat and the Government of Saudi Arabia, was launched at a screening in September 2011. The Team continued to facilitate a Task Force study of rehabilitation programmes funded by the Government of Norway.[64]

76. The Team is also a member of the working groups covering human rights, border management and terrorist financing.

VIII. Other issues

The Committee website

77. The Committee website holds an increasing amount of information to help Member States to understand and implement the sanctions measures. The Team has submitted an updated Information Package to the Committee that takes into account all the changes mandated under resolution 1989 (2011), which it expects to be available on the website in due course in all official languages.

[64] So far covering Algeria, Australia, Bangladesh, Egypt, Jordan, Kuwait, Malaysia, Mauritania, Morocco, Saudi Arabia, Singapore, Sudan, Turkey and Yemen.

Annex

Litigation relating to individuals on the Al-Qaida Sanctions List

European Union

1. The European Commission has filed an appeal jointly with a member country of the European Union against the decision regarding Yasin Abdullah Ezzedine Qadi (QI.Q.22.01) taken by the General Court of the European Union in September 2010, which ordered the annulment of the sanctions against Qadi, adopting a "full and rigorous"[a] standard of judicial review. The Court found that the European Union authorities had not provided Qadi access to the evidence against him or addressed the "exculpatory evidence"[b] he had provided. It criticized the wholesale adoption by the European Union of the summary of reasons for listing published by the Al-Qaida and Taliban sanctions Committee, which it found "general, unsubstantiated, vague and unparticularised", so preventing Qadi from "launch[ing] an effective challenge to the allegations against him".[c] The Court concluded that Qadi's fundamental rights, namely his right to defend himself, his right to an effective judicial review and his right to property, had been infringed. The appeal remains pending.

2. The General Court of the European Union stayed the proceedings brought by Saad Rashed Mohammad Al-Faqih (QI.A.181.04) and the Movement for Reform in Arabia (QE.M.120.05)[d] pending the final ruling of the Court of Justice of the European Union in the Qadi case.[e] Likewise, the General Court stayed the proceedings brought by Sanabel Relief Agency Limited (QE.S.124.06) among others, pending that ruling.[f]

Pakistan

3. The action brought by the Al Rashid Trust (QE.A.5.01) against the application of the sanctions measures against it remains pending in the Supreme Court of Pakistan on appeal by the Government from an adverse decision of 2003.[g] The similar challenge brought by Al-Akhtar Trust International (QE.A.121.05) remains pending before a lower court.[g]

United Kingdom of Great Britain and Northern Ireland

4. The United Kingdom is currently defending a judicial review challenge to its decision-making with regard to the designation under the Al-Qaida sanctions regime

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[a] Judgment of the General Court (Seventh Chamber) of 30 September 2010, *Kadi v. Commission*, case T-85/09 (available from http://curia.europa.eu), para. 151.

[b] *Kadi v. Commission*, para. 178.

[c] *Kadi v. Commission*, para. 174.

[d] *Al-Faqih and MIRA v. Council and Commission*, case T-322/09 (available from http://curia.europa.eu).

[e] *Commission v. Kadi*, case C-584/10 P (joined cases C-584/10 P, C-593/10 P, C-595/10 P) (available from http://curia.europa.eu).

[f] *Al Faqih and Others v. Commission*, case T-134/11 (available from http://curia.europa.eu).

[g] Information provided by Pakistan.

of Hani al-Sayyid al-Sebai Yusif (QI.A.198.05), who resides in the United Kingdom.[h]

United States of America

5. On 23 September 2011, the United States Court of Appeals for the Ninth Circuit issued a decision upholding the designation of Al-Haramain Foundation (AHIF) (United States of America) (QE.A.117.04) on the merits and finding that, while aspects of the process afforded to AHIF violated its Fifth Amendment right to due process, these violations were harmless error.[i] The Ninth Circuit did, however, find that the failure to obtain a judicial warrant prior to the designation violated the Fourth Amendment and remanded the case to the district court to consider what remedy, if any, was appropriate. On 14 December 2011, the Government petitioned the Ninth Circuit for rehearing. On 27 February 2012, the Ninth Circuit denied the rehearing petition and revised its opinion to clarify the Fourth Amendment holding.

6. On 19 March 2012, the United States District Court for the District of Columbia held that the listing of Yasin Qadi (QI.Q.22.01) in the United States was "amply supported" by both classified and unclassified materials demonstrating his support for, among others, persons tied to Al-Qaida and related groups and activities. The Court found that Qadi had supported Al-Qaida figures, including Wa'el Julaidan (QI.J.79.02), with benefits and over $1 million in funds. The Court also rejected Qadi's constitutional claims.[j]

Cases mentioned in the Team's eleventh report (S/2011/245) involving individuals whose names the Committee has now removed from the List[k]

Canada

7. On 7 June 2010, Abu Sufian Abd al-Razziq[l] filed a suit in the Federal Court in Ottawa to challenge the implementation of the sanctions against him by Canada.[m] After his delisting, Abd al-Razziq dropped his constitutional claims but his damages claims remain pending.

European Union

8. The General Court of the European Union stayed the proceedings brought by Abd al-Rahman al-Faqih, Ghuma Abd'Rabbah, Tahir Nasuf and Sanabel Relief Agency[f] pending the final ruling of the Court of Justice of the European Union in the Qadi case.[c]

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[h] Information provided by the United Kingdom.

[i] *Al-Haramain Islamic v. U.S. Department of Treasury* No. 10-35032 (September 23, 2011) (available from www.ca9.uscourts.gov/datastore/opinions/2011/09/23/10-35032.pdf).

[j] *Kadi v. Geithner*, No. 09-0108, memorandum opinion (District Court for the District of Columbia, 19 March 2012) (available from http://docs.justia.com/cases/federal/district-courts/district-of-columbia/dcdce/1:2009cv00108/134774/56/0.pdf?1332242198).

[k] Included for the sake of completeness. These cases will not appear in future reports.

[l] See press release of 30 November 2011 (available from www.un.org/News/Press/docs//2011/sc10468.doc.htm).

[m] *Abdelrazik et al v. Attorney-General of Canada* (T-889-10); information provided by Canada.

9. Cases brought by Elsharif Elosta[n] and Maftah Mohamed Elmabruk[o] were dismissed in September 2011. Proceedings initiated by Shafiq ben Mohamed ben Mohamed al-Ayadi[p] and Abdulbasit Abdulrahim[q] were removed from the Court's registry respectively in January and February 2012. The case of Faraj Faraj Hussein al-Sa'idi[r] was removed from the Court's registry in June 2011 following the death of the applicant.

European Court of Human Rights

10. The case brought by Youssef Mustapha Nada Ebada in the European Court of Human Rights is pending before the Grand Chamber. In connection with his inclusion on the Al-Qaida and Taliban sanctions List, he claims violations, inter alia, of article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (pertaining to the right to a fair trial).[s]

United Kingdom

11. Abdulbaqi Mohammed Khaled, Maftah Mohamed Elmabruk and Abdulbasit Abdulrahim, all of whom reside in the United Kingdom, have brought legal review challenges to the United Kingdom decision-making with regard to their designation under the Al-Qaida sanctions regime.[t]

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[n] *Elosta v. Council and Commission*, case T-102/09 (available from http://curia.europa.eu).

[o] *Maftah v. Council and Commission*, case T-101/09 (available from http://curia.europa.eu).

[p] *Ayadi v. Commission*, case T-527/09 (available from http://curia.europa.eu).

[q] *Abdulrahim v. Council and Commission*, case T-127/09 (available from http://curia.europa.eu).

[r] *Al Saadi v. Commission*, case T-4/10 (available from www. curia.europa.eu).

[s] *Nada v. Switzerland* (No. 10593/08) (available from www.echr.coe.int).

[t] Information provided by the United Kingdom.

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Security Council

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Letter dated 1 October 2012 from the Chair of the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities addressed to the President of the Security Council

I have the honour to transmit herewith the report of the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities, presenting its position on the recommendations contained in the twelfth report of the Analytical Support and Sanctions Monitoring Team established pursuant to resolution 1526 (2004), which was submitted to the Committee in accordance with paragraph (a) of annex I to resolution 1989 (2011) (see annex to the present letter).

I should be grateful if the present letter and its annex could be brought to the attention of the members of the Security Council and issued as a document of the Council.

(*Signed*) Peter **Wittig**
Chair
Security Council Committee pursuant to
resolutions 1267 (1999) and 1989 (2011)
concerning Al-Qaida and associated
individuals and entities

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Annex

Recommendations contained in the twelfth report of the Analytical Support and Sanctions Monitoring Team: position of the Committee

I. Introduction

1. On 30 March 2012 the Analytical Support and Sanctions Monitoring Team (the "Monitoring Team") submitted its twelfth report to the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities ("the Committee").

2. Since December 2005, the Committee has established the practice of responding to each of the reports submitted to it by the Monitoring Team and bringing to the attention of the Security Council the Committee's position on the recommendations contained in the reports. After a thorough examination of the twelfth report of the Monitoring Team, the Committee would like to continue this practice and bring to the attention of the Council its position on the recommendations contained therein.

3. The present position paper aims to draw attention to those recommendations made by the Monitoring Team in its twelfth report that were the subject of particular focus in the Committee. The Committee welcomes the Monitoring Team's continued efforts to identify ways to improve the implementation and effectiveness of the sanctions measures concerning Al-Qaida and associated individuals and entities. It is of the opinion that all Member States should be made aware of the Monitoring Team's recommendations and the position of the Committee on those recommendations.

II. Mandate and scope of the sanctions regime

4. **On the Monitoring Team's recommendation to adopt a regional and risk-based approach:** The Committee wishes to emphasize its mandate as a global sanctions regime aimed at countering the threat posed by Al-Qaida and associated individuals and entities. The mandate of the Committee reflects a sustained and comprehensive approach, based on the active participation and collaboration of all Member States. In line with its mandate, the Committee, with the assistance of the Monitoring Team, would continue to monitor and assess the evolving threat of the Al-Qaida network in countries and regions worldwide.

5. Furthermore, the Committee remains committed to ensuring that the Al-Qaida Sanctions List is dynamic and responsive to the threat. It recognizes that the scope of the Monitoring Team's mandate is global and that its monitoring and assessment work should focus on all areas where the threat exists and where the Committee might consider focusing future designations. The Committee recalls that it is mandated to base its decisions related to listing and delisting on requests made by Member States. In this context, the Committee emphasizes that it remains the responsibility of all Member States to ensure that the List of targeted individuals and entities accurately reflects the evolving threat posed by Al-Qaida through the submission of listing and delisting requests in a timely manner. It also emphasizes the legal obligation of all States Members of the United Nations to implement the

global 1989 sanctions regime against listed individuals and entities. The Committee notes that there is no hierarchy among listed individuals and entities in terms of monitoring the implementation of the sanctions regime.

6. The Committee looks forward to periodic follow-up reporting and recommendations on the linkages between Al-Qaida and those individuals, groups, undertakings or entities eligible for designation under paragraph 1 of resolution 1988 (2011), as mandated in annex I (aa) to resolution 1989 (2011).

III. Strengthening the impact of the sanctions

7. **On increasing the visibility of the regime:** The Committee takes note of the recommendations in this regard so as to enhance its transparency and public awareness of its activities. It will continue to consider the proposals made by the Monitoring Team in this regard. In the context of the broader debate about enhancing cross-institutional coherence within the United Nations counter-terrorism architecture, the Committee notes the Secretary-General's proposal for the creation of a counter-terrorism coordinator.

8. The Committee notes that it is existing practice to agree to hold occasional meetings at which it discusses the sanctions regime in relation to a particular issue or listed group, as well as the overall strategy of the Committee, as appropriate. It also notes the existing practice to invite Member States to attend Committee meetings to discuss particular issues relevant to the activities of listed parties in a national or regional context.

9. **On impact assessment:** While the Committee considers that it might be helpful to conduct a meaningful and methodologically rigorous evaluation of the impact of sanctions, this cannot be a priority for the Monitoring Team given time and resource constraints.

IV. Implementation of the sanctions

10. **On non-implementation:** The Committee notes that reporting on possible cases of non-compliance as well as making recommendations for improving implementation is at the centre of the Monitoring Team's mandate, as described in paragraphs (i) and (j) of annex I to resolution 1989 (2011). The Committee looks forward to the assistance of the Monitoring Team with its analysis of non-compliance by collating information collected from Member States and submitting case studies, both on its own initiative and at the Committee's request, as well as by presenting recommendations, which could be used by Member States to assist them with the implementation of the sanctions. With regard to the need to strengthen the capacity of Member States to fully implement the Security Council's sanctions regime against Al-Qaida and associated individuals and entities, the Committee encourages the Monitoring Team to further enhance its role in this regard, including through cooperation with the Counter-Terrorism Committee Executive Directorate, which serves as a system integrator for capacity-building initiatives within the Council's sanctions framework.

11. **On the Ombudsperson:** The Committee has adapted its procedures to reflect the enhanced mandate of the Ombudsperson introduced in resolution 1989 (2011)

and remains open to further improvements to the fairness and transparency of this process. In this context, the Committee recalls the need for close cooperation between the Ombudsperson and Member States, especially in the area of information-sharing, and reiterates the importance of reaching confidentiality agreements. The Committee will carry on its work with the Ombudsperson to ensure that the process continues to work effectively.

12. **Further on the Ombudsperson:** The Committee notes that the implementation of this recommendation would require the Security Council to amend the Ombudsperson's mandate. It also notes that the mandate of the Ombudsperson provides a recourse mechanism for petitioners. The Committee underscores the value of consensus-based decisions, in particular in the field of counter-terrorism. It remains ready to examine further suggestions, including from the Monitoring Team, on improving the effectiveness of delisting processes, in accordance with its mandate.

13. **On reviews:** The Committee notes the recommendation of the Monitoring Team to draw attention to the provisions of paragraphs 27 and 28 of resolution 1989 (2011) when writing to designating States in the context of the reviews of the Al-Qaida Sanctions List. This reflects the practice already adopted by the Committee.

14. **On the recommendation for a new format of the List:** The Committee highlights the recommendation made by the Monitoring Team to continue to work towards adopting a uniform format of sanctions lists throughout all United Nations sanctions regimes in the interest of enhancing implementation through greater coherence and consistency. This position was already expressed in the Committee's position paper on the recommendations contained in the eleventh report of the Analytical Support and Sanctions Monitoring Team (S/2011/728, annex). The Committee looks forward to further steps to be taken by the Secretariat and the Monitoring Team in this regard.

V. Assets freeze

15. **On informal financing and the non-profit sector:** The Committee notes the challenges regarding informal financing and the charitable or not-for-profit sector, and welcomes the Monitoring Team's activities in this regard. The Committee considers this issue to be particularly relevant to implementation of the assets freeze under the Al-Qaida sanctions regime and is looking forward to further recommendations, including from the Monitoring Team, in this regard. The Committee underlines the fact that these efforts should be coordinated with other relevant United Nations entities, in particular the Counter-Terrorism Committee and the Counter-Terrorism Committee Executive Directorate.

16. **On exemptions:** The Committee remains committed to ensuring that the exemptions procedures set out in resolution 1452 (2002) are used effectively and notes in this context that the Security Council has requested the Monitoring Team to review the Committee's procedures for granting exemptions pursuant to resolution 1452 (2002), and to provide recommendations for how the Committee can improve the process for granting such exemptions (see resolution 1989 (2011), para. 57). The Committee looks forward to receiving more detailed proposals from the Monitoring Team in this regard.

VI. Arms embargo

17. **On improving the political commitment to implementation:** In line with the mandate of the Monitoring Team, the Committee looks forward to further reports from the Monitoring Team related to non-implementation of the measures set out in paragraph 1 of resolution 1989 (2011), including paragraph 1 (c) concerning the arms embargo.